

DAVID BUDINSKI ET AL. 1/

IBLA 77-65

Decided June 30, 1977

Appeal from decision of Alaska State Office, Bureau of Land Management, dated September 7, 1976, holding mining claims null and void.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims:
Withdrawn Land--Withdrawals and Reservations: Effect of

A mining claim located for a non-metalliferous mineral on land at a time when such land was withdrawn from mineral entry for non-metalliferous minerals is properly declared null and void ab initio.

2. Administrative Procedure: Hearings--Mining Claims:
Hearings--Rules of Practice: Hearings

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

APPEARANCES: William B. Murray, Esq. Portland, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

David Budinski and four others 1/ have appealed from a decision dated September 27, 1976, of the Alaska State Office, Bureau of

1/ The other appellants are Don Roberts, Vince Leier, Ostar Weber, Norman Burmeister.

Land Management, holding mining claims Helen Nos. 1 through 9 and Jet Nos. 1 through 66 null and void ab initio for the reason that at the time the claims were located, the lands they cover were withdrawn from all forms of appropriation and disposition under the public land laws except location for metalliferous minerals.

The State Office decision states:

Location notices for the mining claims named above were posted in February and March of 1969 by David Budinski, Don Roberts and Norman Burmeister, and were recorded in the Fairbanks Recording District. The other named parties obtained interest in the named claims by way of quitclaim deed executed on February 2, 1971. The claims are located in T. 4 S., R. 26 E., Fairbanks Meridian.

On January 22, 1969, the lands involved in these claims were withdrawn for protection of the right of the Native Aleuts, Eskimos and Indians of Alaska by Public Land Order No. 4582. The lands were withdrawn from all forms of appropriation and disposition under the public land laws (except locations for metalliferous minerals).

The Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688) revoked Public Land Order No. 4582. However, section 17(d)(1) of the act withdrew all unreserved public land laws (except locations for metalliferous minerals). The lands were withdrawn for a period of 90 days to allow for a review of the public lands in Alaska.

On March 15, 1972, the lands involved in these claims were withdrawn for classification and protection of public interest in lands by Public Land Order No. 5180. The lands were again withdrawn from all forms of appropriation, including location and entry under the mining laws (except locations for metalliferous minerals), 30 U.S.C., Chapter 2.

[1] Thus, the lands have not been available for location for nonmetalliferous minerals since the effective date of Public Land Order No. 4582, January 22, 1969. It is well established that a mining claim located on land withdrawn from mineral entry is null and void ab initio and is properly declared so when at the time of location, the land was not open to entry for nonmetalliferous minerals. (Ralph Page, 78 I.D. 167 (1971); David W. Harper, et al., 74 I.D. 141 (1967)).

Therefore, the subject claims which appear to be for asbestos, a nonmetallic mineral, lie within areas withdrawn by PLO 5180 and are hereby declared to be null and void ab initio, for the purpose of nonmetallic mining. The case file will be closed when this decision becomes final.

On appeal, appellants contend, first, that the Secretary has no authority to withdraw land from one kind of mineral entry but not another. The short answer is that PLO 4582, supra, was issued pursuant to the authority vested in the Secretary by Executive Order 10355 of May 26, 1952 (17 F.R. 4831), which in turn delegated to the Secretary, along with other authority to withdraw land vested in him, the power vested in the President by section 1 of the Act of June 25, 1910 (43 CFR 141). That Act authorized the President to withdraw any public lands, including lands in Alaska from all disposition under the public land laws, except that all lands withdrawn under section 1, supra, and section 2, as amended (43 U.S.C. § 142), were to remain open to mining laws "so far as the same apply to metalliferous minerals." [Emphasis added.]

Thus, the Secretary was well within his authority in withdrawing the lands from location for non-metalliferous, but not metalliferous, minerals. Appellant does not assert that the claims were located for other than a non-metalliferous mineral.

[2] The appellant next argues that mining claims cannot be held invalid without notice and hearing. This argument is without merit. It is well settled that mining claims located on land closed to mineral entry are null and void ab initio, and that no hearing is necessary when there is no disputed question of fact. W. A. Todd, 28 IBLA 180 (1976). Where the validity of a claim turns on the legal aspect to be given to matters of record which show the status of the land when the claim was located, notice and hearing are not required. Id.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Joan B. Thompson
Administrative Judge